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Commonwealth of Massachusetts

House of Representatives

Management Review:

CIVIL SERVICE SYSTEM

House Committee on Post Audit and Oversight

Representative Robert A. Cerasoli

To: Representative George Keverian
Speaker of the House and Honorable
Members of the House of Representatives

As Chairman of the Post Audit and Oversight Committee, I am pleased to present this report entitled, *Management Review: Civil Service System* for your consideration.

The Committee recognizes the need to staff state positions with the most qualified employees in order to maximize the level of services provided for each tax dollar expended. Toward that end, we have endeavored to analyze the current hiring practices in state employment with special emphasis on the civil service system.

We concluded that the hundred-year-old civil service system plays a minor role in the staffing of state positions. Where civil service hiring is used, the merit system processes of examination, certification and tenure are not fully exercised.

This report supports all efforts that would lead to the full utilization of the civil service system thereby restoring the benefits of the examination, certification and tenure processes.

Respectfully submitted,
ROBERT A. CERASOLI
Chairman

SUMMARY AND CONCLUSION

The civil service system developed across the United States late in the 19th Century in the wake of a mounting public outcry against the spoils system in government. The idea that public employment was payment for political allegiance had fallen into disfavor with the electorate.

With the passage of the Pendleton Act in 1882, the federal government led the way toward a modern merit system in government employment. New York was the first state to follow the federal government's lead and, in 1884, Massachusetts became the second state to establish a civil service system.

Today, of the 88,068 employees in Massachusetts state government, 37,900 hold positions which are regulated by the civil service statute, Chapter 31 of the General Laws of the Commonwealth. While the number of civil service positions may appear significant, its overall relationship to the civil service merit system consisting of examination, certification and tenure, is not.

Only 7,800 of the 37,900 are permanent civil servants, who have passed the examination for their positions and have acquired tenure in that position. These individuals represent only 8.9% of all state employees.

There are 5,300 individuals who are occupying civil service positions for which they have passed an examination but they cannot acquire tenure because the position is either temporarily established or, the position has an owner who is on leave from the position and holds tenure rights to the vacated position. Individuals in this category are said to have "Temporary After Certification" status.

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There are 4,600 provisionally promoted individuals occupying civil service positions. Those provisionally promoted have civil service status, usually in a lower position, but have not passed an examination for the positions they currently hold.

This leaves 20,200 individuals who are occupying civil service positions which they acquired without an examination. Further, they do not hold civil service rights to any other position in state service. Individuals in this category are called provisionally appointed.

The civil service system was developed to institute a merit system that assured government positions were staffed by the most qualified individuals. They acquired their positions by passing an examination and were rewarded for their good service with tenure which put them outside the whims of political favoritism.

Statutory changes and administrative processes have, over the years, served to weaken the state civil service system. Chapter 699 of the Acts of 1981 created a new management classification plan and management pay plan for the Commonwealth. The legislation came as a result of the Statewide Classification Study completed under the direction of the Department of Personnel Administration (DPA). In this study, all positions within the Executive Branch, managerial and non-managerial, were for the first time since 1956, evaluated and reclassified.

This law removed 515 positions from the civil service system. These positions, among the highest paying in the state, were removed from the examination, certification and tenure process of the merit system. This contributed to the erosion of the civil service system.

The civil service system was further diluted by Chapter 717 of the Acts of 1983. It removed 465 non-managerial professional data processing positions from civil service and the salaries for these positions were set yearly by the Executive Office for Administration and Finance.

The intent of the law was to make salaries competitive with private industry and, thereby, allow the state to recruit qualified data processing professionals.

Again, in this case, the civil service system was perceived as an impediment to recruiting and retaining qualified employees.

In 1978, Chapter 522 established the Department of Social Services (DSS). In the process of staffing the new department, 2,500 positions were either changed from permanent civil service positions or created as temporary. While no tenure rights were lost by individuals shifted to the new organization, anyone hired initially into DSS would not have the opportunity to acquire tenure because of the temporary nature of the positions. The creation of this department is a graphic illustration of movement away from the merit system.

While these statutory actions have deteriorated the base of the civil service system, administrative actions within the system itself have tended to make civil service unresponsive to the goals of the merit system.

The examination process over the years had not kept pace with the demand for exams. This is best illustrated by the 20,200 provisional appointments, to civil service positions and also the 4,600 provisional promotions. The inadequacy of the examination process has bloated the provisional appointment figure. At the same time, stacking level after level of

provisionally promoted permanent civil service employees in a holding pattern, prevents new or promoted employee from occuping vacated positions. DPA's recent strides to accelerate the examinations has yet to make an impact on the provisional population.

A recent DPA report shows that in Fiscal 1986 of the 5,441 individuals initially hired into state civil service positions 4,973 were provisional appointments. This figure represents 91.4% of those hired. This means that despite the accelerated examination program, the system is not responsive to the goals of civil service.

The Massachusetts civil service system is sliding toward extinction. No longer are positions filled through the merit system - it has been replaced by catch phrases such as "for better management", "to compete with the private sector", "let managers manage", "nationwide search" and "networking".

Today, over 90% of the state's workforce has been hired without benefit of the merit system.

Why has this happened? Why, instead of a forceful move to make civil service work, has the system been allowed to languish?

Civil service has had no one to champion its cause.

The Committee on Public Service has proposed legislation to address the plight of civil service and make the system work as it was intended. The Committees' efforts should be supported and it is hoped that this report will be of assistance as the legislation is considered.

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FOREWORD

The House Post Audit and Oversight Bureau was established by Chapter 351, Section 282 of the Acts of 1981. The Bureau conducts program and performance audits under the direction of The House Committee on Post Audit and Oversight.

This study was requested by Representative Michael J. Rea, Jr. in order to determine the current effectiveness of the civil service system in hiring state employees. There was concern that many civil service positions were being filled without the use of the merit system elements of examination, certification, and tenure.

This report supports all recommendations that would lead to a more effective civil service system and restore confidence in the merit system.

We wish to thank the Office of Management Information Systems (OMIS), the Comptroller's Division and the Department of Personnel Administration (DPA) for their considerable assistance during the course of this study.

The data generated, reviewed, and analyzed would not have been possible without the cooperation and assistance of Personnel Administrator David Haley, Deputy Commissioner Barbara Jarvis and DPA Systems Director Ed Ruddy.

This report was supervised by Mr. David Malloy, Assistant Director of the House Post Audit and Oversight Bureau.

Richard F. Tobin, Jr.
Director

I. INTRODUCTION

The civil service system developed across the United States during the late 19th century in the wake of a mounting public outcry against the spoils system in government. The idea that public employment was payment for political allegiance had fallen into disfavor with the electorate.

With the passage of the Pendleton Act in 1882, the federal government led the way toward a modern merit system in government employment. New York was the first state to follow the federal government's lead, and in 1884, Massachusetts became the second state to establish a civil service system.

Civil service was developed in order to institute a merit system that would ensure that positions would be staffed by the most qualified individuals who earned their positions by passing an examination. These individuals would obtain tenure, thus putting them outside the whims of political favoritism.

The Massachusetts civil service merit system requires that a job applicant pass an examination and be certified as eligible for the position by the Department of Personnel Administration (DPA), before acquiring a civil service position. Once hired, those individuals, who satisfactorily complete a six month probationary period, would attain tenure in their respective positions.

The House Post Audit and Oversight Committee was concerned that many civil service positions were being filled without the use of the merit system process. They believed that this situation was leading to the erosion of the merit system in state employment.

This study focuses on the extent of that erosion and the reasons for it. We address the question of whether the civil serivce merit system is being used now as orginally intended - as an answer to the spoils system.

II. METHODOLOGY

To determine the status of the civil service merit system, the following questions had to be answered:

- What constitutes a civil service position?
- How many state employees are employed under civil service law?
- Of those employed under civil service, how many have conformed to the merit system elements of examination, certification and tenure?
- How many state employees are in civil service positions who have not conformed to the merit system?
- Are positions being removed from the civil service merit system, and if so, how many and why?

To answer these questions, a comprehensive analysis was conducted in the following areas:

A. Background Research

B. Interviews

C. Statistical Data

A. Background Research

Initial research concerning civil service consisted of a review of Chapter 31 of The General Laws. From this review came a definition of civil service positions. Chapter 31 forms the basic framework for the examination, certification and tenure components of the merit system. It further enunciates other methods of filling civil service positions.

B. Interviews

Meetings were held with individuals in the offices and bureaus within DPA. These meetings were held to determine how the various elements of the law impacted and were interpreted in the different areas of the DPA organizational structure. The following is a list of the offices and bureaus in which interviews were conducted:

- Office of Systems Developement
- Office of Appeals and Standards
- Division of Information Services
- Division of Management Services
- Examination Bureau
- Records Processing Bureau
- Classification Bureau
- Recruitment and Referral Bureau

C. Statistical Data

Obtaining the statistical data needed to analyze the various methods of acquiring civil service employment was a time consuming process. Involved in this process was the determination of the following:

- Total number of state employees
- Total number of civil service employees
- Identification of non-civil service employees
- Total permanent civil service employees

- Total temporary civil service employees

- Employment status of all civil service employees and their relationship to the merit system

Statistical data concerning state employees was provided by DPA through the Personnel Management Information System (PMIS) of the Office of Management Information Systems and also by the Comptroller's Division.

III. STATISTICAL DATA - CIVIL SERVICE POSITIONS

There are 88,068 state employees-

District Attorneys	- 1,078
Courts	- 6,026
Legislature	- 1,226
Const. Offices	- 1,896
Executive	
Higher Education	- 15,942
Non-Civil Service	- 24,000
Civil Service	- 37,900
Total State Employees	88,068 [1]

Data on executive employees, exclusive of higher education, was obtained from the Personnel Management Information System of the Office of Management Information Systems, while all other employee data was obtained from the Comptroller's Division.

The total employee count does not include the Port Authority, MBTA or other public authorities. The employee count for the constitutional offices does include the employees of the State Lottery.

The 37,900 individuals in civil service positions are occupying either temporary or permanent civil service positions.

Permanent Civil Service Positions- These positions are funded out of the (01) budgetary account entitled - Salaries, Permanent Positions. Permanent civil service positions are those positions which ideally should be staffed through the merit system process of examination, certification and tenure.

Temporary Civil Service Positions- These positions are funded out of the (02) budgetary account entitled - Salaries, Temporary Positions.

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[1] Effective Date - July 1, 1987

Temporary civil service positions are ideally staffed through the examination and certification process, but no civil service tenure can be acquired in these positions, since the positions are temporary.[2]

The various ways in which the 37,900 individuals occupy civil service positions are as follows: [3]

Permanent Civil Service Positions:		
Permanent Appointment	7,800	
Temporary Appointment	1,800	
Provisional Promotion	2,100	
Provisional Appointment	8,800	
Total - Permanent		20,500
Temporary Civil Service Positions:		
Temporary Appointment	3,500	
Provisional Promotion	2,500	
Provisional Appointment	11,400	
Total - Temporary		17,400
Total Civil Service Positions Filled		37,900

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2 Temporary positions are now funded out of subsidiary (01) effective July 1, 1987

3 Appendix A

IV. THE EROSION OF THE MERIT SYSTEM

The erosion of the merit system in state service can be traced to the following:

A. Provisional Appointments

B. Temporary Civil Service Positions

C. Tenure

D. Movement Away From Civil Service

E. Collective Bargaining

A. Provisional Appointments

A provisional appointment is the hiring of an individual into a civil service position without the benefit of an examination. Historically, the examination process has not kept up with the demand, and therefore, qualified lists of candidates did not exist.

There are currently 20,200 individuals occupying civil service positions as Provisional Appointees. Of these 8,800 are occupying permanent positions and 11,400 are holding temporary positions. While some of the provisionals are "Section 26 Temps", this has no bearing on their originally being hired as provisional appointees.[4] In 1970, approximately 20% of civil service appointments were provisional and this percentage has been growing to the point where we now have over half our civil service appointments being provisional.[5]

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[4] Discussion of "Section 26 Temps" is contained in Chapter V of this report

[5] Governor's Management Task Force Report, 1979 (p. 12)

Over the years these provisional appointments have been made because no list of qualified individuals existed for vacant positions. The law requires that, after a federally funded provisional appointment is made, DPA must conduct an examination for the position and establish an eligibility list within one year. The law is silent concerning time requirements for examinations for state funded positions.

The lack of a statutorily defined examination time-frame for state funded civil service positions has been a major contributor to the scarcity of certified lists of eligible candidates and the corresponding excess of provisional appointments and provisional promotions.

The law does require that once certification from an eligible list occurs, the provisional must vacate the position within thirty days. This requirement has little impact unless the law dictates a time requirement for the examination itself.

It can be seen that the law puts no pressure on the system to expedite the examination process for state funded positions. However, the statute does recognize the significance of the process by requiring the provisional appointee to vacate his position within thirty days of the certification of an eligible list of candidates, who have passed the examination for the position.

A potential employee, who does take an open competetive examination for a civil service position, is further required to meet the entrance requirements for taking the examination. Entrance examination requirements for open competitive exams are checked and validated after examination while promotional exams require validation before examination.

Therefore, it is possible for an individual to pass an open exam but be turned down for employment because of the lack of experience required under the entrance requirements.

Contrast this with the requirements placed upon the provisional appointee. An individual who must only be certified as meeting the very general requirements of a job specification in order to be hired.

The examination process includes the ordering of the exam, test construction, exam announcement, test administration and scoring. Then comes the preparation of a certified list of eligible candidates and ultimately the interview cycle and hiring.

This process commences, when a position is filled provisionally. Due to the examination workload, exams are scheduled based upon the number of provisionals in a specific job title. The more provisionals in the same job title, the more likely that the exam will be scheduled.

Examinations for certain clerical positions are also prioritized, because of consent decrees requiring minority employment in several agencies.

Exclusive of the high number of provisionals within job title situation and consent decree requirements, the exam cycle from the filing of a requisition to the hiring, had, in the past, taken from eighteen months to two years. Unique job titles have taken much longer.

B. Temporary Civil Service Positions

Temporary civil service positions differ from permanent positions in that they are funded out of an account for temporary positions. These positions do no allow the occupant to acquire civil service tenure since the positions expire at the end of the fiscal year, and therefore, require yearly legislative approval in order to be continued.

There are currently 17,400 individuals occupying temporary civil service positions.

There are three ways for an individual to acquire a temporary civil service position:

1. Provisional Appointment
2. Provisional Promotion
3. Temporary After Certification

1. Provisional Appointments

This individual has not passed an examination for the position and holds no rights to the position. The only requirement for obtaining the position is that the appointing authority certify to DPA that the individual possesses the very general qualifications for the position.

2. Provisional Promotion

An individual who holds a permanent civil service position is appointed to a higher temporary position. He then awaits an examination for a position to which he cannot obtain ownership.

On the positive side of this type of appointment is the fact that, the promoted individual has passed the examination for the position he has vacated. Therefore, he brings to the new position more documented accreditation than the provisional appointee.

On the negative side of such an appointment, the provisionally promoted employee, by retaining ownership (tenure) in the job he has left, ties up that position and allows the vacated job to be filled by another provisional appointment.

3. Temporary After Certification

This individual, when appointed, has passed the examination for the position and is on the certified list for the position. Those temporarily certified must retake the examination, when given again, in order to stay on a certified list for the job title. This action is required in order to retain certification should the temporary position be made permanent.

In actuality, temporary civil service positions have rarely been made permanent.

The rationale for thousands of employees in temporary civil service positions is unclear. This results in denying these state employees the full benefit of the merit system. The use of temporary positions is an unnecessary complication in an already overcomplicated civil service system. A case may be made for minimal use of temporary positions, but this should be done outside the civil service system and thereby, not distract from the concept of the merit system.

In fact, the specter of temporary employment could dissuade highly qualified individuals, unfamiliar with the vagaries of the state civil service system, from accepting these positions, because they are unaware that temporary state positions may continue ad infinitum.

Also, the potential employee's decision to accept or reject the temporary position would be based to a large extent, upon the manner in which the appointing authority portrayed the temporary nature of the position.

C. Tenure

"Tenured Employee" a civil service employee who is employed following (1) an original appointment to a position on a permanent basis and the actual performance of the duties of such position for the probationary period required by law or (2), a promotional appointment on a permanent basis.[6]

This and other references in Chapter 31 give tenure rights to civil service employees in permanent civil service positions. This means that once an employee attains tenure by serving a probationary period (usually six months) the position and the occupant become one. If the occupant leaves the position for another assignment due to a provisional promotion, for example, he would retain ownership of the vacated position, until such time as he attained tenure in another position.

Until this happens, no one can obtain tenure in the vacated position. Thus, in the case of provisional promotions, the promoted civil servants leave behind a string of permanent positions. These positions cannot be permanently occupied by new employees or other civil servants further down the career ladder.

This situation erodes the merit principle by denying individuals tenure rights in civil service positions. There are currently over 4,600 positions so affected; that is, there are over 4,600 permanent civil service positions in which the occupant, no matter how qualified, cannot gain tenure.

From the foregoing it can be seen that when tenure is vested with an individual in a particular position, forces are put into motion which

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6 M.G.L.A. Ch. 31. S1

create administrative processes that do not really contribute to the goals of the merit system. Rather it tends to obstruct the civil service system from filling positions through the examination, certification and tenure process.

This problem could be remedied by associating civil service tenure with the individual and not with the position title which the individual holds.

While on the subject of tenure, it may be well to describe what civil service tenure really means. Many have the perception that civil service employees, in fact, state employees in general, have a job for life. This is not the case.

Civil service tenure is associated only with permanent civil servants. While tenure may be viewed as a haven from political influence and the spoils system, it does not assure a job for life.

What tenure does do is to give the permanent civil servant the ability to accrue civil service seniority in the system, and to use this seniority to supplant individuals without civil service status.

D. Movement Away From Civil Service

Over the past several years there has been movement away from permanent civil service and the merit system as a means of staffing state positions. In two of the three examples discussed herein, permanent positions have been statutorily removed from civil service and, in the third instance, the Division of Social Services, permanent positions were made temporary.

The examples cited are:

1. Management Positions
2. Technical Positions
3. Elimination of Permanent Positions

1. Management Positions

This statutory shift away from civil service was embodied in Chapter 699 of the Acts of 1981. This law was instituted as a result of the statewide classification study developed under the aegis of DPA. In this study all positions within the executive branch, both managerial and non-managerial were, for the first time since 1956, evaluated and reclassified.

Chapter 699 dealt exclusively with management positions. In a message submitted to the Legislature along with the legislation for the Management Classification Plan and Management Pay Plan, Governor King said in part:

> In addition to increasing salaries, however, the attached legislation would also lay the foundation for a program of career development and training for managers. It would remove all upper and middle management positions from coverage under civil service or tenure statutes, although anyone who currently has such status or tenure would retain such rights as long as he or she occupied the position. Also evaluation of a manager's job performance would be mandatory and a favorable evaluation would be required for any merit or step-rate salary increase.

His message went on to point out that the classification study showed that our state government's ability to attract capable managers was being hampered by a non-competitive salary structure. State salaries were 22% below salaries in New England for positions with similar duties performed in the private sector. The law was intended to begin the process of upgrading the salaries of managerial positions, with the goal of putting the state in a more competitive salary posture and, thereby, attracting talented managers into state service.

The number of managerial positions created was 2,700. Under the classification and pay plan these positions were grouped into twelve(12) managerial pay grades, M - I through M - XII, and within each grade four(4) generic job titles. The job titles are as follows:

- Administrator
- Fiscal Officer
- Program Manager
- Program Management Specialist

The lowest four pay grades, M - I to M - IV, continued under civil service, while the remainder, M - V to M - XII, were removed from the civil service system. Of these higher echelon positions 515 had been permanent civil service positions before the classification and pay plan became law.

Any employee, transferred from a civil service position in which he had tenure to a management position, would retain such tenure. No new or untenured employee would have the opportunity to gain tenure in M - V through M - XII positions, or gain the position through the examination process. Thus, 515 of the higher grade civil service positions did not come under the examination, certification and tenure process of the merit system. Since the inception of the Management Plan the number of managers has gone from 2,700 to the current figure of 3,717.

2. Technical Positions

Another example of the statutory shift away from the civil service system came with the passage of Chapter 717 of the Acts of 1983 (The Technical Pay Plan). The Act dealt with the employment of data processing professionals in non-managerial positions and became law on January 4, 1984. The law encompassed eighteen(18) job titles whose duties required

the employee to have an advanced technical education and experience with computers and their software.

The law affected 465 positions, 420 of which were civil service. These positions were removed from civil service and grouped in a category of positions called Professional Data Processing Personnel (PDPP). The Pay Plan gave the responsibility of recruiting, and salary for PDPP positions to the appointing authority and vested three aspects of the employment function in Administration and Finance (A&F).

First of all, appointments to PDPP positions, both transfers of currently employed individuals into the reclassified positions and initial appointments of new employees require the approval of A & F.

Secondly, A & F sets salary limits for each agency based on the size of its PDPP staff. This is done on a yearly basis in consideration of salary trends in the data processing industry.

The third A & F function is to evaluate, on a yearly basis, the salary structure of the agencies and the performance reviews of all PDPP employees.

The Technical Pay Plan removed two hundred and nineteen (219) permanent positions from the rolls of civil service and the merit system of examination, certification and tenure. Transferred employees with tenure retained their status.

3. Elimination of Permanent Positions

Chapter 552 of the Act of 1978 established the new Department of Social Services (DSS) within the Executive Office of Human Services. Positions were shifted from the Department of Public Welfare to DSS in order to staff the new agency.

Included in the DSS staffing pattern were 397 positions from Human Services which were permanent civil service but became temporary when put into DSS. This action assured that all positions in the new agency were temporary.

As in the other instances cited, the 397 employees with tenure, who transferred to DSS, retained their civil service tenure.

E. Collective Bargaining

Chapter 1078 of the Acts of 1973 gave state employees the right to organize and bargain collectively over hours, wages and conditions of employment. Managerial employees M - V through M - XII do not come under the collective bargaining law, since they are, by definition, in policy making positions. Also excluded are confidential employees, those who assist and work directly for policy making individuals, intermittent employees and those paid through the (03) and (07) subsidiary accounts.

The Office of Employee Relations (OER) was designated by Administration and Finance, the "employer" under the law, to coordinate all labor relation matters and negotiate all collective bargaining agreements concerning state employees.

In Executive Agencies, exclusive of Higher Education, all bargaining unit employees are assigned to one of twelve statewide bargaining units established by the Labor Relations Commission.[7] Currently, more than ninety percent (90%) of state employees in Executive agencies have collective bargaining agreements.

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7 Appendix B

These agreements are binding upon all supervisors and managers of bargaining unit employees and the agreements cover areas including:

- Salary schedule
- Procedures and criteria for promotion
- Personal time, vacation, sick leave, bereavement leave, military and court leave
- Work schedule, compensatory time and overtime
- Disciplinary procedures
- Affirmative action
- Layoff procedures
- Grievance procedures

A representative contract refers to full time and regular part time employees covered by the agreement. They are employed by the Commonwealth in job titles that fall within the purview of the bargaining unit. This includes CETA employees and seasonal employees whose employment is for a period of ninety (90) consecutive days or more. Through the collective bargaining contracts civil servants, both permanent and temporary, along with those employees with no civil service status, are covered by the same union contracts. They are all subject to the same salary and benefit structure as negotiated by their respective bargaining units.

As to the subject of a reduction in force, the contract addresses this area with the stipulation that civil service employees are not included in the contractual process for layoffs and bumping rights. The tenure section of this report has addressed the layoff procedures within civil service.

A representative contract concerning layoff and bumping rights states:

> In the event the department/agency shall layoff a non-civil service employee because of reduction in force, the least senior employee in the affected title in the department/agency shall be laid off.

Given the advent of collective bargaining for state employees, one must consider what the future will hold for civil service. Through the union contract process, the provisional appointee, with no civil service status, obtains seniority rights within the bargaining unit. He can use his seniority to retain a position.

Further, those individuals in temporary civil service positions, while gaining no seniority under civil service, gain seniority rights within collective bargaining.

The highest order of seniority involves the permanent civil servants. The retention of these individuals takes precedence over the non-civil servant and the temporary civil servant.

Collective bargaining seniority makes more palatable the use of temporary civil service positions, but erodes the merit system principles of examination, certification and tenure.

V. ATTEMPTS TO HALT THE EROSION OF CIVIL SERVICE

The erosion of the civil service system has not gone unnoticed by DPA. In recent years, attempts have been made to retard the move away from the merit system, but, to date, these actions have been met with little success.

Actions aimed at stemming the erosion include the following areas of concern:

A. Provisional Employees
B. Temporary Positions
C. Examination and Certification
D. Reduction of Job Titles
E. Extension of Lists

A. Provisional Employees

In an effort to solve the problem of excessive provisional employees, legislation was enacted to upgrade the status of the provisional population. Section 26 of Chapter 767 of 1981, effective January 4, 1982, stated in part;

> ... The personnel administrator shall... establish an examination procedure for the certification of provisional employees... to permanent positions within the official service of the Commonwealth... Upon the completion of the examination... the administrator shall certify any employee who has served in a civil service position as a provisional employee for a period of at least six months immediately prior to June first, nineteen hundred and eighty one or any employee who has previously passed a civil service examination, and is now serving provisionally without interruption of service for more than two years, and who passes such examination...

Those provisional employees who fell within the parameters of the law numbered thirteen thousand (13,000). As of May, 1987, there have been

only 842 provisionals made permanent civil servants through the workings of the legislation.

While DPA should be commended for their efforts to conduct examinations and make certifications from the target population, the fact is, that over five years into this program, less than 7% of eligible provisionals have achieved civil service status.

B. Temporary Positions

The use of temporary civil service positions was also addressed in Chapter 767 of the Acts of 1981. The law required DPA to contact all state appointing authorities and have them review their rosters of temporary positions. The appointing authorities were required to report to DPA as to why these positions should not be considered permanent. The law further required DPA to file with the Chairpersons of the Joint Committee on Ways and Means, recommendations as to whether such temporary positions ought to either be abolished or be made permanent civil service positions.

The vast majority of agency responses to DPA recommended that the positions be made permanent. DPA transmitted the results of the survey, to Joint Ways and Means in October, 1982. This letter stated in part:

> A substantial number of provisionals, otherwise qualified for participation in the Section 26 special certification process, are employed in temporary positions and thus, for that reason alone, cannot gain permanent status in their present positions. Alternatively, even if there were an adequate supply of permanent positions, the fact remains that thousands of temporary (after certification) employees will receive no opportunity through the provisions of Section 26, to acquire permanent status in these positions. Another important aspect of the provisional employee problem should also be noted. Many provisionals serving in permanent positions will be unable to attain permanent (after certification) status be-

> cause their positions are "owned" by individuals who have been themselves provisionally promoted, are serving in non-civil service positions or are on leave-of-absence. The longstanding concept of assigning permanent ownership rights to positions (rather then people) would seem to merit legislative review at this time.

This paragraph crystalizes the problems of civil service as currently constituted, that is;

- Individuals in temporary positions cannot gain permanent status.
- Because tenure ties up a particular position, provisionals still cannot attain permanent status in the job.

C. Examination and Certification

Within the last year DPA has increased its efforts in the examination area and had reported that as of June 18, 1987, marks are being generated on average within (45) days of the date of an examination and eligible lists are being established within (68) days of the date of examination. DPA also indicates that for the first time in many years there is no multi-year backlog of unprocessed civil service examinations, unapproved public safety appointments or unapproved certifications.

The results of the accelerated examination process has been the establishment of lists and increased certifications. The goal of this whole process is still unrealized, since the process has not impacted on the provisional population. In fact, HPAO asked DPA to supply statistics on civil service initial hirings during Fiscal 1986 and the results showed that 4,973 of the 5,441 civil service appointments were provisional.

The main cause of the high provisional population, an inordinately long exam cycle, has been addressed. However, another roadblock has developed at the agency level of state government. DPA reports that some state appointing authorities either by design or through ignorance, are not complying with the civil service appointment process; that is, they are not removing provisional employees and appointing individuals certified from eligible lists.

DPA has taken action to address this situation. In a letter to HPAO dated July 9, 1987 DPA reported that:

> Because we in the Department of Personnel Administration have the same goal as the legislative branches of government, the reduction of the provisional population and compliance by appointing authorities with civil service laws and rules, I am enclosing... a copy of a letter recently sent to the Civil Service Commission in response to an inquiry about the existing provisional population in spite of the proliferation of available eligible lists.[8]

While we commend DPA's effort in this area, we do recommend that DPA make agencies aware of Section 74 of Chapter 31 of the General Laws which delineates penalties for noncompliance with civil service law.

D. Reduction of Job Titles

There had been over one thousand different job titles requiring examinations. The state wide classification study, which brought about the creation of management positions also addressed non-managerial positions and resulted in the proposed reduction of non-managerial job titles from one thousand and forty (1040) to four hundred and five (405). Implementation of this phase of the study has been reducing the examination

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8 Appendix C

workload. DPA indicates that this should eventually lead to the establishment of certified lists for all civil service positions.

E. Extension of Lists

Chapter 527 of the Acts of 1985 extended the life of civil service lists until new examinations are given and new lists established. While this action increases available lists, it does dilute the quality of civil service appointments.

APPENDIX A

APPENDIX A

ACQUIRING A CIVIL SERVICE POSITION

1. PERMANENT CIVIL SERVICE POSITIONS

Permanent Appointment -

Original Appointment- An individual passes an examination, is certified and then serves in the position through the probationary period and acquires tenure in the position.

Promotional Appointment- A civil service employee with tenure, passes an examination for a higher position, is promoted and, when he acquires tenure in the higher position, a vacancy exists in the lower position which may then be filled permanently.

Temporary Appointment- An individual who has passed an examination for the position, occupies the position, but since the position is temporarily vacant, he cannot permanently occupy and obtain tenure.

Provisional Promotion- An individual who has not passed the examination for his current position is put into the position while awaiting the examination. He retains tenure in the lower position until he gains tenure in the higher position. If the higher position is temporarily vacant, no tenure can be acquired and therefore no tenure can be acquired by anyone who occupies the lower position either, as it now becomes temporarily vacant.

Provisional Appointment- Because no eligible list of candidates for the position exists, an individual who has not passed an examination for the position is appointed. The law states when a provisional appointment is made, an examination should be scheduled.

2. TEMPORARY CIVIL SERVICE POSITIONS

Temporary Appointment- An individual, who has passed the examination for the position, acquires the job but, since the position is temporary, he cannot attain tenure.

Provisional Promotion- A civil service employee with tenure in a lower position is promoted, without examination and due to the temporary nature of the position, retains tenure in the vacated position and thus prevents anyone from permanently occupying the vacated position.

Provisional Appointment- Because no eligible list of candidates for the position exists, an individual who has not passed an examination for the position is appointed. The law states that when a provisional appointment is made, an examination should be scheduled.

APPENDIX B

APPENDIX B

STATE EMPLOYEE COLLECTIVE BARGAINING UNITS

Unit 1 - National Association of Government Employees (Administrative and Clerical)

Unit 2 - Service Maintenance and Institutional Alliance

Unit 3 - National Association of Government Employees (Building Trades and Crafts)

Unit 4 - Institutional Security Alliance

Unit 5 - Coalition of Public Safety (Law Enforcement)

Unit 5A - State Police Association of Massachusetts (State Police)

Unit 5B - Metropolitan Police Patrolmen's Union and Affiliations (MDC Police)

Unit 6 - National Association of Government Employees (Administrative and Professional)

Unit 7 - Massachusetts Nurses Association

Unit 8 - Social and Rehabilitative Alliance

Unit 9 - Massachusetts Organization of State Engineers and Scientists

Unit 10 - Education Alliance

APPENDIX C

The Commonwealth of Massachusetts
Department of Personnel Administration
One Ashburton Place, Boston, Ma. 02108

MICHAEL S. DUKAKIS
GOVERNOR
DAVID A. HALEY
PERSONNEL ADMINISTRATOR

July 9, 1987

TO: David Malloy

FROM Barbara E. Jarvis
Deputy Commissioner for Information Services

SUBJECT: Update of Section 26 status and other pertinent information

In addition to the examination data attached, 842 persons have received permanent appointments since the inception of the program of the 2300 who passed their examinations. This may be attributable to the fact that although they passed the examination, they may not have been selected by the appointing authority or not have been in a position on the list to be reached for certification and consideration.

Because we in the Department of Personnel Administration have the same goal as the legislative branches of government, the reduction of the provisional population and compliance by appointing authorities with civil service laws and rules, I am enclosing in this package a copy of a letter recently sent to the Civil Service Commission in response to an inquiry about the existing provisional population in spite of the proliferation of available eligible lists.

You will note that the Department has over the past year been working with agencies in the effort to increase the end results of the examination process: permanent appointments.

The other document is self-explanatory. It tracks the progress of each examination held since January 1, 1987 to the present. The columns are labeled and the date each stage is accomplished is recorded along with the number of days from the date of examination it has taken to complete the particular state of processing.

This ties in with the 30-60-90-concept we established last year as a Department goal. While we have not achieved it yet in all instances, we are doing well enough to be proud of the results. On average, marks are now going out in about 45 days or less and eligible lists established within 68 days of the examinations. For all examinations held prior to December 31, 1986 lists have been established.

So far, a total of 25 examinations to cover the requirements of Section 26 designees are scheduled for the first half of fiscal year '88. The consolidation of titles occasioned by the implementation of the classification study will cover more Section 26 candidates in a shorter period of time.

BEJ/hw

Enc.

TRAINING SESSIONS

CIVIL SERVICE PROCESS

DATE	AGENCY	NUMBER OF PARTICIPANTS
October 7, 1986 (morning & afternoon)	Metropolitan District Commission Greater Boston Area	120
October 19, 1986 (morning & afternoon)	Metropolitan District Commission Greater Boston Area	75
November 25, 1986 (morning & afternoon)	Metropolitan District Commission Quabbin	50
February 9, 1987	Division of Employment Security	25
February 24, 1987	Fernald State School	50
April 1, 1987	Westborough State Hospital (included personnel from) Westborough State Hospital District IV & IVB Mass. Treatment Center - Bridgewater Taunton State Hospital D.M.H. Central Office - Hospital Management Medfield State Hospital Northampton State Hospital Danvers State Hospital Worcester State Hospital Metropolitan State Hospital	22
April 8, 1987	Purchasing Agents Division (including personnel from) Comptrollers Division Group Insurance Commission Department of Labor & Industries, Division of Industrial Safety Motor Vehicle Management	10
June 8, 1987	Department of Labor and Industry Division of Industrial Safety	30
June 10, 1987	Massachusetts Rehabilitation Commission	6
June 24, 1987	Belchertown State School	25

The Commonwealth of Massachusetts
Department of Personnel Administration
One Ashburton Place, Boston, Ma. 02108

MICHAEL S. DUKAKIS
GOVERNOR
DAVID A. HALEY
PERSONNEL ADMINISTRATOR

July 1, 1987

Richard Linden, Commissioner
Civil Service Commission
One Ashburton Place
Boston, Massachusetts 02108

Dear Commissioner Linden:

For the past year, the Bureau of State Services has made a cognizant effort to attack the "provisional problem" head on by conducting what we call an "Outreach Certification Program" for the purpose of increasing the use of eligible lists in filling vacancies.

Our targets have been mostly the larger agencies since experience has proven that the smaller agencies tend to be more compliant with civil service laws and rules. To date, twenty-one agencies have met with DPA at our invitation.

The approach taken is one designed to meet an agency goal of fostering a spirit of cooperation as we seek to enforce compliance but also to improve our overall image as a service agency. The procedures employed include setting up a meeting with the appointing authority or his designated representative and/or members of his personnel staff. Before the meeting, DPA staff compiles listings of the provisionals employed by the agency, their titles and dates of employment; vacancies remaining in the agency; a glossary of existing eligible lists available to the particular agency; and most importantly, listings of the outstanding certifications, appointments from which remain unreported to DPA for audit and approval. The agency members are then informed as to the status of their personnel transactions as of the date of the meeting.

After this information is discussed, the agency is given the opportunity to input what they think is relevant to the situation. At this point, DPA then suggests that a reasonable timetable of events be drawn up to assist the agency in becoming current in their personnel transaction operations. It is also at this point that we offer whatever technical assistance is needed to accomplish this objective.

The kinds of technical assistance which have been requested as the result of such meetings cover a broad spectrum; civil service informational seminars, conducted for personnel officers or for

the employees unfamiliar with the merit system process; training in the PMIS procedures in entering the various types of personnel transactions; assignment of various DPA staff members to work on a one on one basis to work out problems and straighten out misconceptions.

In addition, one of our project meetings resulted in an extended effort over several months during which a delegated certification process was developed and implemented with the Department of Public Works enabling that agency to issue its own certifications when needed. Along with the process, access to the ELIPSYS system was expanded and an audit and control system set in place. Evaluation of this process is ongoing. If a success, as it appears to be, the delegation of the certification function will be offered to other interested agencies provided that their personnel transactions are current and up to date.

To date, ten agencies have asked DPA staff to come to their work site to conduct the seminar developed and conducted by staff members of the Bureaus of Examinations and State Services. (See attached) As word of this service has spread, agencies with which we have not yet met to straighten matters out have requested a date for a seminar.

The success of the 30-60-90 program has resulted in the examination processing accelerating to the point where all marks for examinations held up through May 2, 1987 have been sent out and all eligible lists as the result of examinations held through March, 1987 have been established. The lengthy delays experienced by agencies waiting for lists and certifications has been eliminated.

The implementation of the classification study has necessitated the review of all examination orders, and scheduled examinations, for possible consolidations of titles and reviews of the suitability of current eligible lists which were based on old specifications. This exercise has been lengthy but will result in proper lists for use of appointing authorities and will provide a suitable bridge for the New Examination Program. With the anticipated cyclical examination schedule encompassing the new categories of titles, examinations will be held so that lists will always be available for all titles. With the linkage of the PMIS and ELIPSYS systems, checks and balances will be available to prevent provisional appointments where there are viable eligible lists. To ensure that this situation will come to pass sooner than later, Chapter 527 provisions provides for lists to remain in existence until a new list is established or the Personnel Administrator authorizes its deactivation.

With all of the mechanisms now in place and DPA's dedication to the goals of improving the entire merit system program, the "provisional problem" may become a thing of the past in the not too distant future.

Sincerely,

David A. Haley
Personnel Administrator

DAH:BEJ:egh

cc: Betty Waxman

House Post Audit and Oversight Committee

House Post Audit and Oversight Bureau

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